

## EN BANC

[ A.M. No. 19-08-19-CA, October 15, 2019 ]

**RE: REPORT OF ATTY. MARIA CONSUELO AISSA P. WONG-RUSTE, ASSISTANT CLERK OF COURT, COURT OF APPEALS, VISAYAS STATION, CEBU CITY "RE: MISSING ORIGINAL RECORDS OF CA-G.R. CV No. 01293, SOFIA TABUADA, ET AL. VS. ELEANOR TABUADA, ET AL."**

### DECISION

**INTING, J.:**

This refers to the Report and Recommendation<sup>[1]</sup> dated June 27, 2019 of Atty. Maria Consuela Aissa P. Wong-Ruste, Assistant Clerk of Court and Investigating Officer, pursuant to an investigation conducted on the Incident Report of Mr. Fernando C. Prieto (Prieto), Chief of the Judicial Records Division, regarding the missing records of CA-G.R. CV No. 01293 entitled "*Sofia Tabuada, et al. v. Eleanor Tabuada, et al.*" (Tabuada case).

#### *The Antecedents*

It appears that on September 30, 2009, the Court of Appeals, Visayas Station (CA-Visayas) rendered a Decision penned by Associate Justice Samuel H. Gaerlan with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Edgardo L. Delos Santos which granted the appeal in the Tabuada case.<sup>[2]</sup>

On January 9, 2010, at 2:45 p.m., the original records of the Tabuada case were turned over by the Office of the *Ponente* to the Archives Unit of the Judicial Records Section (JRS) of CA-Visayas.<sup>[3]</sup> Rossie A. Maceda (Maceda), a stenographer detailed in the Archives Unit, who was tasked to receive all pleadings, *rollos*, and original records from different offices, received the original records of the Tabuada case.<sup>[4]</sup> She listed the received documents then turned them over to Voltaire Matildo (Matildo), Clerk II of the Archives Unit, who was assigned to docket all received original records and *rollos* and to encode them according to their specific locations in the bodega. Afterwhich, Matildo gave the records to Eleazer "Randy" Canoneo (Canoneo), a contractual employee assigned at the Archives Unit, for safekeeping in the bodega.

Canoneo then prepared an index card with the following details<sup>[5]</sup>:

CASE NO:	01293 CV
PARTIES:	SOFIA TABOADA, ET AL. VS. ELEANOR TABUADA ET AL.
PONENTE:	GAERLAN
SHELF:	15

ROW:	5
COLUMN:	COLUMN Right
REMARKS:	

Subsequently, a Resolution dated March 7, 2011 of CA-Visayas denied the motion for reconsideration filed in the Tabuada case.<sup>[6]</sup>

Sometime in January 2014, Anthony F. Delima III (Delima), then Court Aid II, who was assigned to assist the Archives Unit in the recording of all the movements of original records and holds office inside the safekeeping area, was instructed by Mario C. Agura (Agura), Head of the Archives Unit, to conduct an inventory of all remanded and elevated original records. It was during the conduct of the inventory that Delima discovered that the original records of the Tabuada case was no longer in its assigned shelf. He then immediately informed Agura about the missing records.<sup>[7]</sup>

Years later, while the Tabuada case was already pending before this Court, a litigant's representative therein requested for a copy of its original records *via* phone call made to Ricarose E. Pedaria (Pedaria), then Clerk II of the Archives Unit, sometime in June 2016. Pedaria then relayed the request to Agura, who instructed her to inform the caller to call again. She then wrote the case number in a piece of paper and gave it to Delima for retrieval in the safekeeping area.<sup>[8]</sup> However, Delima could not locate the records. When the requesting party made a return call and demanded to speak with the head of the office, Pedaria referred her to Abdul M. Amer (Amer), JRS Head. It was then that Pedaria overheard Agura confirming to Delima that the requested records are the ones which they were already trying to locate at the outset.<sup>[9]</sup>

Amer was able to talk to the requesting party while he was at the Office of the Archives Section of CA-Visayas supervising the inventory of cases. He instructed Delima, who was already a Clerk III of the Archives Unit, to produce a copy of the records of the Tabuada case. After several follow-ups, Amer received an information that there was no favorable action on the request. He then ordered Agura to locate the requested records and to submit his corresponding report.<sup>[10]</sup>

In compliance therewith, Agura submitted his explanation wherein he alleged that their logbook data revealed that on February 9, 2010, the Archives Unit received the records of the Tabuada case. Agura confirmed that when a litigant requested for a copy of the records thereof, Delima tried to locate them in the bodega; but was surprised that they were no longer there. Agura concluded that the records could have been inadvertently moved or transferred to another location, but undertook to continue efforts to retrieve them.<sup>[11]</sup>

On April 17, 2018, Prieto directed Agura and other concerned personnel of the Archives Unit to submit their respective explanations on the circumstances surrounding the loss of the records in the Tabuada case.<sup>[12]</sup> Prieto further required Amer, as the Head of the JRS of CA-Visayas, to conduct his own investigation concerning the missing records and to submit his recommendation.<sup>[13]</sup>

Consequently, Agura submitted his explanation wherein he recalled that after the case records were transferred to the bodega, in Shelf 15, Row 5, Right Column as

the assigned locator—there were no recorded transfers or possible transactions that would have resulted to the relocation of the records until the discovery of loss in 2016. He recounted that despite annual inventories conducted by CA-Visayas and Court of Appeals, Manila (CA-Manila), the records could not be located. He further disclosed that he already inquired with the different lower courts as to the possibility of the inadvertent transmittal to them of the missing records, but the efforts proved futile.<sup>[14]</sup>

In another Explanation<sup>[15]</sup> dated July 16, 2018, Agura clarified that Canoneo prepared the locator index as the personnel-in-charge with the filing and retrieval of cases, together with Delima. He added that there were no inquiries from litigants nor requests for a copy of the Tabuada case which led him to the conclusion that the records remained in the same location until they were discovered missing. Lastly, he justified that his personal visit to the Regional Trial Court of Iloilo City, which is the court of origin of the Tabuada case, was with the approval of Justice Gabriel Ingles, Justice Marilyn Lagura-Yap, and some Judicial Records Division personnel.

Hence, on September 4, 2018, Prieto filed an Incident Report with the Clerk of Court of CA-Manila<sup>[16]</sup> which was thereafter indorsed to Atty. Ma. Consuela Aissa P. Wong-Ruste (Atty. Wong-Ruste), Assistant Clerk of Court of CA-Visayas, for investigation, report, and recommendation.<sup>[17]</sup>

#### *The Investigator's Recommendation*

In her Report and Recommendation dated June 27, 2019, Atty. Wong-Ruste was convinced that Agura was negligent in failing to institute a secure, efficient, and effective process work flow with respect to the custodianship and safekeeping of original records. It was concluded that, while there was an index card maintained for each original record for the purpose of recording any movement thereof, it was not updated and the pulling out of records could be done by any employee in charge for the remand of original records. Further, the safekeeping area was not even secured and was also made easily accessible, without any logbook with respect to the use of its designated keys. There was also no periodic inventory of original records under the custodianship of the Archives Unit. Worse, there were instances when original *rollos* were remanded to the wrong court.

She also found Agura liable for his failure to immediately report to his supervisor, in the person of Amer, that the original records of the Tabuada case were missing. It was only when his supervisor called his attention as to the missing records when he began to send tracers to the lower courts within the Visayas region. He even failed to monitor the replies to these tracers, if any. This delay, his lack of proper supervision over the JRS, and his indifference to his duty caused the failure to timely reconstitute the missing records.

Thus, Atty. Wong-Ruste recommended that Agura be charged with the less grave offense of simple neglect of duty, with a penalty of one month and one day suspension, or a fine in lieu of suspension since Agura is discharging front line functions, aside from the insufficiency of personnel complement of the Archives Unit in CA-Visayas.

#### *The Issue*

The essential issue in this case is whether or not Agura should be held administratively liable for simple neglect of duty for the loss of the original records of the Tabuada case.

### *The Ruling of this Court*

This Court finds the Report and Recommendation of the Investigating Officer well-taken, except for the penalty.

Agura is the Head of the Archives Unit of CA-Visayas and as such, he occupies a highly sensitive position as the designated custodian of all court records elevated to the appellate court in Cebu. His primary task is to safekeep all original records and *rollos* placed under his custody, as well as to monitor and maintain a record of these documents. In addition, under the mantle of the Judicial Records Division is the issuance of certified true copies of documents or exhibits under the custody of his office.<sup>[18]</sup>

Section 1, Canon IV of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel, mandates that "[c]ourt personnel shall at all times perform official duties properly and with diligence." Judicial machinery can only function if every employee performs his task with the highest degree of professionalism.<sup>[19]</sup> All court personnel are obligated to perform their duties properly and with diligence.<sup>[20]</sup> Any task given to an employee of the judiciary, however menial it may be, must be performed in the most prompt and diligent way.<sup>[21]</sup>

In this case, Agura failed to properly account for the loss of the original records under his custody. As defense, he merely surmised that the records were misplaced or possibly relocated because of inactivity or the absence of requests with respect to access over it. Aside from its trivial nature, this excuse is not compelling enough to justify failure to perform one's duties properly.

Agura, as head of the Archives Unit, was evidently remiss and negligent in the discharge of his duties. The loss of the original records reflects an inefficient and disorderly system of keeping case records and his lack of close supervision in the performance by his subordinate personnel of their duties. Worse, Agura's failure to take appropriate action within a reasonable period of time after discovery of the missing records in 2016, manifests his carelessness and indifference. As head of the Archives Unit, Agura should have exercised diligence, informed the head of the JRS and the *ponente* about the missing records upon knowledge thereof, and resorted to safety measures to ensure that all original records are accounted for as to avoid similar occurrences in the future.

Neither does the lack of proper orientation and training exculpate Agura from liability. CA-Visayas opened its office to the public in October 2004. Agura assumed office in November 2004 and conceded that he was not oriented about the duties and task of his office as head of the Archives Unit as he merely relied on Lolita Espinosa, who was then the JRS Head. However, it should be noted that, when Agura assumed the position of Archives Unit Head, it was understood that he was willing, ready, and capable to do his job with utmost devotion, professionalism, and efficiency. Hence, his lack of proper training, orientation or the necessary manpower are unavailing defenses.